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IN THE

SUPREME COURT OF THE UNITED STATES

No. [redacted] 172

HAROLD D CRAMER and VIOLA B. CRAMER, His Wife,
Petitioners,

vs.

E. ROMLE ROMINE and MARIAN S. ROMINE, his wife; LEROY COLLINS, Governor, RAY E. GREEN, Comptroller, J. EDWIN LARSON, Treasurer, RICHARD ERVIN, Attorney General and LEE THOMPSON, Commissioner of Agriculture as Trustees of the Internal Improvement Fund of the State of Florida,
Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE DISTRICT COURT OF APPEAL OF FLORIDA, THIRD DISTRICT.

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SUBJECT INDEX

Opinions Delivered Below 1

Grounds of Jurisdiction 2

Date of and time of entry of decree and judgment of affirmance sought to be reviewed 2

Date of orders denying rehearings 2

Statute Conferring Jurisdiction—

Section 1257, Title 28, USCA 2

Questions Presented for Review—

1. Is the Final Decree Devoid of Support by the Record So That It and the Judgment Affirming It Violate Petitioners' Rights Afforded by the Fourteenth Amendment? 2

2. Are the Judgments Sought to Be Reviewed Contrary to Applicable Decisions of This Court? 2

Constitutional Provisions Involved—

Due process clause 14th Amendment to the U. S. Constitution 3

Statement of the Case 3-8

Appendix (Chapter 253, F.S., Final decree, other Judgments, etc.) 1A-7A

TABLE OF CASES

Harold D. Cramer and wife v. *E. Royale Romine and wife et al.*, Fla., 114 So.2d 629 2

Pembroke v. *Peninsular Terminal Co.*, 108 Fla. 541, 146 So. 249, 258 5

N & L Auto Parts Co. v. *Dorman*, Fla., 117 So.2d 410 7

Thompson v. *City of Louisville*, U.S. , 80 S. Ct. 624, 4 L. Ed.2d 654 7

U. S. v. *San Jacinto Tin Co.*, 125 U.S. 247, 31 L. Ed. 747 7, 8

U. S. v. *Stinson*, 197 U.S. 200, 49 L. Ed. 724 8

STATUTES

Section 1257, Title 28, U.S.C.A. 2

Chapter 253, Florida Statutes 3, 4, 6, 4A

IN THE

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No.

HAROLD D. CRAMER and VIOLA B. CRAMER, His Wife,
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vs.

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Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE DISTRICT COURT OF APPEAL OF FLORIDA, THIRD DISTRICT.

TO THE SUPREME COURT OF THE UNITED STATES:

Petitioners, HAROLD D. CRAMER and VIOLA B. CRAMER, his wife, seek by this their petition for a writ of certiorari to invoke a review by this court of a judgment of the District Court of Appeal of Florida, Third District, affirming a final decree of the Circuit Court of Monroe County, Florida, cancelling a grant of sovereignty land from the State of Florida to petitioners, which judgment was passed by the Supreme Court of Florida.

(a) Reference is made to Fla. 114 Southern Reporter 2nd 628, for the opinion and judgment of affirmance, the only opinion delivered below, copy of which and copy of said final decree are appended. Reference is made to appendix by the letter "A", to the record in the *nisi prius* court by the symbol "R1", to the record of the court of appeal by the sign "R2", and that in the Supreme Court by "R3".

(b) The jurisdiction of this court is invoked on the grounds that the final decree and its affirmance are devoid of support in the record and that said decisions are contrary to applicable decisions of this court.

(i) The final decree was dated and entered December 8, 1958. (R. 1, 22-25). The judgment of affirmance was dated and entered September 24, 1959. (R. 2, 2).

The Supreme Court of Florida denied certiorari January 26, 1960. (R. 3, 6).

(ii) Said court of appeal denied petition for rehearing October 14, 1959. (R. 2, 8). The Supreme Court of Florida denied petition for rehearing April 1, 1960. (R. 3, 11).

The mandate of the said court of appeal issued *April 5, 1960*. (R. 2, 9).

(iii) Jurisdiction to review said decree and its affirmance by writ of certiorari is conferred upon this court by Section 1257, Title 28, USCA.

(c) The questions presented for review are:

1. IS THE FINAL DECREE DEVOID OF SUPPORT BY THE RECORD SO THAT IT AND THE JUDGMENT AFFIRMING IT VIOLATE PETITIONERS' RIGHTS AFFORDED BY THE FOURTEENTH AMENDMENT?

2. ARE THE JUDGMENTS SOUGHT TO BE REVIEWED CONTRARY TO APPLICABLE DECISIONS OF THIS COURT?

(d) The case involves the following clause of the Fourteenth Amendment:

> "nor shall any state deprive any person of life, liberty, or property, without due process of law."

(e) The aspects and facts of the case material to the consideration of the questions presented are:

(1) The respondents, Romines, and the petitioners have been during the time involved upland owners on the Bay of Florida at Vaca Key in Monroe County. The other respondents are the present Governor and Cabinet officers, *ex officio*, trustees holding title to and managing the public lands of the state.

(2) The respective uplands of the Romines and petitioners are situated on the north shore of Vaca Key. The main navigation channel runs easterly and westerly along the north shore of this key and is reached from the foreshore of each of these tracts by going due north. (R. 1, 73, 84, 49).

(3) Each of these upland owners acquired their upland in April, 1951. (R. 1, 73, 84).

(4) Petitioners purchased their upland to build a new residence thereon and remove their residence thereto from Columbus, Ohio, which they accomplished in early 1952.

(5) On January 16, 1952, petitioners obtained the grant in question from the trustees then in office under and in pursuance of Chapter 253, Florida Statutes. (A) (R. 1, 9).

(6) On August 8, 1955, the then trustees, consisting of a different governor and comptroller but the same other officials, attempted to grant to respondents, Romines, a portion of this same land granted to petitioners together with other land. (R. 1, 76).

(7) As seen from the complaint, this conflict in grants and interest of the Romines on the one hand and petitioners on the other is the source of this litigation. (R. 1, 1-11).

(8) It should be noted at this point that by Chapter 253, *supra*, the trustees had title to the land and full power to grant it to petitioners; that the notice required was duly given (R. 1, 8-80); that the Romines and all interested parties were required in pursuance to the notice to make any objections which they might have to the proposed sale within 30 days, and to file their suit in equity within 15 days if the trustees overruled their objections.

(9) Instead of exercising their right in the manner and within the time limited by the said law under which the sale was made to petitioners, the respondents, Romines, joined by the trustees then in office, filed this suit on May 10, 1957, 5 years later. (R. 1, 1-11).

(10) Reduced to substance, the grounds alleged and upon which the final decree rests were: (1) that in making the grant, the trustees then in office relied upon inadequate information furnished them in and by the application of petitioners which failed to show the interests of the Romines in the land granted, (2) that the Romines, instead of petitioners, were entitled to purchase the land or a part of it under the statute, (3) that the notice published as required by the statute, proof of which was appended to the complaint (R. 1, 8), was insufficient.

(11) Motion to dismiss for failure to state a cause of action (R. 1, 12) was ordered carried forward to final hearing. (R. 1, 13).

(12) In their Answer (R. 1, 14-21), petitioners set up several defenses including their denial of the above mentioned allegations.

(13) Upon the trial of the issues raised, none of these issues was proven. *The record is devoid of any support for said complaint or the final decree!*

(14) The attack on the notice of sale was, by the same breath of the complaint, shown, by the proof of the publication thereof attached thereto, meritless. The Romines did not testify that they were misled by the notice, nor did either of them testify at all.

(15) None of the grantors, and none of the trustees testified. No one connected with the trustees as employee or otherwise at the time of the sale and grant to petitioners testified. The Director for the trustees, *at the time of the trial, but who was not employed by or connected with them at any time during the sale and grant to petitioners*, testified. (R. 1, 50-62). He admitted that he had no knowledge of the facts and information before the trustees when the grant in question was made.

(16) There was a total absence of any evidence to show that the trustees relied upon and were misled by the inadequate data furnished them by petitioners, so as to overcome the presumption that they acted upon the essential facts obtained by them upon due investigation and examination.

> "The presumption is that the trustees being public officials of the state, complied with their duty under the law, and that they correctly ascertained the facts warranting their action."
>
> (*Pembroke* v. *Peninsular Terminal Co.*, 108 Fla. 541, 146 So. 249-253).

(17) There was no showing, nor was there any finding, that the Romines, instead of petitioners, were entitled to have purchased the land, or any portion of it. Nor, if they had had such right, how that could properly bear

upon the grant to petitioners, in view of the due notice and default of objection and suit by the Romines, as required by Section 253.08, Florida Statutes, then in force (A).

(18) Undoubtedly, petitioners had a right to the application of such statute against the respondents, Romines, under the due process clause.

(19) And it was a violation of this right for these courts to refuse the due application of this statute, and decisions of this court herein cited, of which they were duly made aware, to this record, *which totally fails to support the complaint or the decree. This, ever increasing, heresy, that so falsely pretends that the wisdom of the court in the particular proceeding affords better justice than that channelled by and through the essentials of due process, must be stopped!*

(f) This violation of the Fourteenth Amendment, by the final decree in that it was devoid of support by anything in the record, was expressly raised and principally argued in the District Court of Appeal of Florida, Third District, in petitioners' main brief on assignment of errors (R. 1, 28-29), under "Point 1", reading as follows:

> "1. THE AMENDED BILL DOES NOT STATE A CAUSE OF ACTION NOR IS IT SUPPORTED BY THE EVIDENCE OR ANYTHING IN THE RECORD. (Assignments of Error, 1-4, 9-11.)"

and as shown by other extracts from petitioners' said brief (A).

(g) And in petition for rehearing to said court, in these words:

> "and which finding, decree and theory are each and all clearly shown by the record to be unsupported by the evidence or anything else." (R. 2, 6-7).

(h) The District Court of Appeal, by citing no principle of law nor reason whatever for its judgment of affirmance, virtually made itself *dernier ressort* of Florida Justice, in view of decisions and acquiescence of the State Supreme Court. (*N & L Auto Parts Co.* v. *Dorman et al.*, Fla., 117 Southern Reporter 2nd 410).

(i) However, petitioners did file in the Supreme Court of Florida, their petition for certiorari in which they were limited to setting up decisions of that court and another district court of appeal, alleged to be in direct conflict with the decision in question in the matter of estoppel. In their petition for rehearing, petitioners ventured to mention this violation of the due process clause.

(j) *Petitioners believe and assert that there is not more in the record to support the final decree than there was in the record to support the judgment in Thompson* v. *City of Louisville*, U.S. , 80 Supreme Court Reporter 624, 4 Lawyer Edition (2nd) 654.

"To set aside such a solemn instrument as" a grant from the State of Florida "the testimony on which this is done must be clear, unequivocal and convincing and it cannot be done upon a bare preponderance of evidence which leaves the issue in doubt." The words just quoted are from head note 6 by Justice Miller, when speaking of a patent issued by the United States in *U. S.* v. *Jacuto Tin Co.*, 125 U.S. 273, 31 L. Ed. 747:

(k)

> "The immense importance and necessity of the stability of titles depending upon these official instruments demand that suits to set aside and annul them should be sustained only when the allegations on which this is attempted are clearly stated and fully sustained by proof. * * *.

"It should be well understood that only that class of evidence which commands respect and that amount of it which produces conviction shall make such an attempt successful."

(*United States v. Stinson*, 197 U.S. 200, 25 S. Ct. 426, 49 L. Ed. 724).

(b) It seems obvious that the one purpose of this suit (R. I. 1-11) was to regain this sovereignty land from petitioners in order to grant it to the respondents, Romines.

"When it is apparent that the only purpose of bringing the suit is to benefit one of two claimants to the land, and the government has no interest in the matter, the suit must fail."

(Head note 4 by Justice Miller, *U. S. v. San Jacinto Tin Co., et al., supra*).

Wherefore, petitioners pray the court to grant a writ of certiorari and its order, quashing the final decree and the judgment affirming it, hereby sought to be reviewed, with such other and further relief as shall seem right and proper to the Court.

JOHN G. SIMMS,
Attorney for Petitioners.